



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 578

**[Docket No. FR-5476-I-03]
RIN 2506-AC29**

Continuum of Care Program – Increasing Mobility Options for Homeless Individuals and Families with Tenant-Based Rental Assistance

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: On July 31, 2012, HUD published an interim rule entitled “Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program.” The Continuum of Care (CoC) program is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. This rule amends the CoC program regulations to allow individuals and families to choose housing outside of a CoC’s geographic area, subject to certain conditions, and to retain the tenant-based rental assistance under the CoC program. In addition to allowing individuals and families to choose housing outside of the CoC’s geographic area, this interim rule exempts recipients and subrecipients from compliance with all nonstatutory regulations when a program participant moves to flee domestic violence, dating violence, sexual assault, or stalking. This relaxation of conditions is consistent with the Violence Against Women Reauthorization Act of 2013, directing greater protections for victims of domestic violence, dating violence, sexual assault, or stalking.

DATES: Effective date: **[Insert date that is 30 days after the date of publication in the Federal Register.]**

Comment due date: **[Insert date that is 60 days after the date of publication in the Federal**

Register.]

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between

8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-7000; telephone number 202-708-4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Continuum of Care (CoC) program is authorized by the McKinney-Vento Homeless Assistance Act (McKinney-Vento), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, which is Division B of Public Law 111-22, approved May 20, 2009 (HEARTH Act). The purposes of the CoC program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers and by State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals

and families experiencing homelessness. Section 1504 of the HEARTH Act directs HUD to establish regulations for the CoC program. (See 42 U.S.C. 11301 note.) On July 31, 2012, at 77 FR 45422, HUD published an interim rule to establish, in 24 CFR part 578, the regulatory framework for the CoC program and the CoC planning process.

Continuum of Care not only is the name of the program, but refers to the body responsible for carrying out the duties under the CoC program. In order to be eligible for funds under the CoC program, representatives from relevant organizations within a geographic area must establish a CoC. Representatives from relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals. Where these organizations are located within the geographic area served by the CoC, HUD expects a representative of the organization to be a part of the CoC.

Although HUD issued its July 31, 2012, rule for effect, HUD also sought public comment, and at the end of the public comment period on October 1, 2012, HUD had received 551 public comments. HUD received valuable feedback from the public comments. However, HUD did not immediately move to the next rule stage because HUD wanted to examine how the interim regulations worked in practice. HUD has gained valuable information on where modifications may need to be made to its existing CoC regulations, not only on the basis of public comments received, but also on the basis of experience with the existing regulations to date.

II. This Rule

This rule focuses on a narrow area of the existing CoC program regulations and that is the ability of an individual or family with tenant-based rental assistance funded through the CoC program to choose housing, outside of a CoC's geographic area, subject to certain conditions, and to retain the tenant-based rental assistance under the CoC program if the program participant moves outside the CoC's geographic area.

McKinney-Vento and the CoC program regulations provide that CoC program grant funds may be used for rental assistance for homeless individuals and families. Rental assistance includes tenant-based rental assistance, project-based rental assistance, or sponsor-based rental assistance. With respect to tenant-based rental assistance, § 578.51 of the CoC program regulations states that tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. However, the CoC program regulations limit use of tenant-based rental assistance to within the CoC's geographic area. This limitation was determined reasonable because to serve individuals and families outside of the CoC's geographic area may impose greater burden and cost on the recipient providing the assistance. The only exception in the CoC program regulations to the limitation for retention of tenant-based rental assistance is for program participants who are victims of domestic violence, dating violence, sexual assault, or stalking who are at imminent threat of further harm. These participants, however, must have complied with all other obligations of the program and must reasonably believe that they are imminently threatened by harm from further violence if they remain in the assisted dwelling unit.

Commenters on the July 2012 interim rule advised that the exception to retention of tenant-based rental assistance to the CoC's geographic area was too narrow. HUD received

comments, generally, about high-cost housing markets and the difficulty that providers are having in locating affordable units within their CoC's geographic area because of the high cost of housing. A commenter stated that the requirement to use CoC program funds within the CoC's geographic area would cause undue hardship for clients and subrecipients due to the difficulty and time required to find affordable units in high-cost areas of their State. HUD also received comments about how the limitation requiring CoC program funds to be used within the CoC's geographic area restricted tenant-choice and limited opportunities for program participants to identify affordable housing. In response to these concerns, several commenters proposed, as a partial solution, that the regulation be changed to permit program participants to use CoC program funds to rent units outside of the CoC's geographic area.

In light of the comments received on increasing mobility in the CoC program, and HUD's recently issued Affirmatively Furthering Fair Housing final rule, which emphasizes the importance of housing choice,¹ HUD has determined to amend the CoC program regulations to allow all individuals and families receiving tenant-based rental assistance being paid for with CoC program funds (program participants) to choose housing outside of the CoC's geographic area and to retain their tenant-based rental assistance if they move outside of the CoC's geographic area, subject to the following conditions:

- The decision of a program participant to choose housing or move outside of the CoC's geographic area is one that is made in consultation between the program participant and the recipient or subrecipient.
- The recipient or subrecipient may decline a program participant's request to choose housing or move outside of the CoC's geographic area if the recipient or subrecipient is

¹ See Affirmatively Furthering Fair Housing final rule, published on July 16, 2015, at 80 FR 42272.

unable to comply with all CoC program requirements in the geographic area where the housing selected by the program participant is selected, including ensuring the housing meets required safety and quality standards (at the time of publication of this rule compliance with Housing Quality Standards (HQS) is required), carrying out environmental reviews where necessary, calculating the program participant's income for determining rent contributions, conducting an annual assessment of the program participant's service needs, making supportive services available for the duration of the program participant's residence in the project, ensuring supportive services are provided in compliance with all State and local licensing codes, and providing monthly case management in the case of rapid rehousing (RRH) projects. The only reason the provider may decline a program participant's request to choose housing or move outside of the CoC's geographic area is that the recipient or subrecipient cannot reasonably meet all statutory and regulatory program requirements. If the program participant's request to move is declined, but the program participant believes the provider could have reasonably accommodated the request, the program participant may contact the CoC or HUD directly.

- The receiving CoC (the CoC with jurisdiction over the geographic area to which the program participant seeks to move) is not involved in the decision to allow a program participant to move. Since discretion to move rests with the program participant, in consultation with the recipient or subrecipient providing the tenant-based rental assistance, with the goal being continuation of service by the original recipient or subrecipient, the receiving CoC may not prohibit the program participant from moving into its geographic area.

- The program participant remains in the Homeless Management Information System of the CoC where the program participant is enrolled for assistance.

In brief, this rule provides the opportunity for persons who are experiencing homelessness to have access to additional possible housing options while still maintaining their tenant-based rental assistance from the recipient within the CoC where they were determined eligible for, and began receiving assistance. This rule will accomplish this by allowing program participants to use their tenant-based rental assistance in an area outside of the CoC's geographic area where the household presented for, and was determined eligible for CoC program-funded tenant-based rental assistance. While this interim rule allows for expanded mobility, HUD anticipates that tenant-based rental assistance will be used principally within the CoC's geographic area.

With respect to a CoC program participant who has tenant-based rental assistance and is fleeing imminent threat of further harm from domestic violence, the existing regulations allow such participant to move outside of the CoC's geographic area, but the program participant's move is subject to the program participant having complied with all program requirements during their residence in the CoC's geographic area. This rule would exempt the recipient or subrecipient from regulatory requirements (such as providing monthly case management for RRH projects and conducting an annual assessment of the service needs of the program participant that has moved), but the recipient or subrecipient would not be exempt from statutory requirements such as participating in HMIS, ensuring housing meets quality standards, and ensuring the educational needs of children are met. This amendment would facilitate ensuring the safety needs of victims of domestic violence, dating violence, sexual assault, or stalking by imposing less burdensome requirements on recipients and subrecipients while still ensuring that

the housing that will be occupied by the victim of domestic violence, dating violence, sexual assault, or stalking meets all statutory requirements, including minimum quality standards.

Specific Request for Comment: HUD seeks input from providers on the impact of exempting recipients or subrecipients from nonstatutory regulatory requirements when a program participant is fleeing imminent threat of further harm from domestic violence, dating violence, sexual assault, or stalking, and moves to another CoC's geographic area.

HUD also seeks input on exempting recipients or subrecipients from non-statutory regulatory requirements when any program participant, not just a program participant fleeing imminent threat of further harm from domestic violence, dating violence, sexual assault, or stalking, wishes to move outside of the CoC's geographic area, in order to support mobility of tenants that may be moving to access better job opportunities, schools, or other resources.

III. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD, generally, publishes its rules for advance public comment.² Notice and public procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public comment procedures are "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay these two amendments to the existing CoC regulations. HUD's work, subsequent to the July 2012, CoC interim rule on improving the voucher portability process, and the enactment of the

² The Administrative Procedure Act (5 U.S.C. Subchapter II) (APA), which governs Federal rulemaking, provides in section 553(a) that matters involving a military or foreign affairs function of the United States or a matter relating to Federal agency management or personnel or to public property, loans, grants, benefits, or contracts are exempt from the advance notice and public comment requirement of sections 553(b) and (c) of the APA. In its regulations in 24 CFR 10.1, HUD has waived the exemption for advance notice and public comment for matters that relate to public property, loans, grants, benefits, or contracts, and has committed to undertake notice and comment rulemaking for these matters.

Violence Against Women Act of 2013³ emphasized to HUD the need to provide for mobility for participants in its programs and not terminating tenant-based assistance. As noted in HUD's Streamlining the Portability Process final rule,⁴ and in HUD's Affirmatively Furthering Fair Housing final rule, mobility allows individuals or families greater choice in living in the areas of their choice. As noted in the preamble, this interim rule would allow program participants, in consultation with their service providers, to move to outside of a CoC's geographic area of service. The consultation is necessary because the goal is to strive for and ensure continued CoC service to the program participant. The interim rule removes the prohibition that only allowed individuals and families who are victims of domestic violence, dating violence, sexual assault, or stalking to move outside of the CoC's geographic area of service. Additionally, this rule removes additional requirements imposed on individuals and families who are victims of domestic violence, dating violence, sexual assault, or stalking seeking to move outside of CoC's geographic area of service, which may delay the ability of such individuals or families to move to a safe location.

VI. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”

³ Public Law 113-4, approved March 7, 2013.

⁴ See final rule published on August 20, 2015, at 80 FR 50564.

Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a “significant regulatory action,” as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive order).

HUD expects it will receive few requests from program participants who are not domestic violence victims to move outside of the CoC’s geographic area where they are currently residing. HUD does expect some requests will arise from program participants residing with the jurisdictions of CoCs that cover small geographic areas. HUD expects no increase or decrease in the number of requests from program participants who are victims of domestic violence as these program participants already have this flexibility. For these reasons, HUD believes the impact of this rule would be minimal, but the flexibility to move provided would align with two major HUD rulemakings: HUD’s Affirmatively Furthering Fair Housing final rule and HUD’s Violence Against Women Act 2013 final rule, to be issued later this year.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Environmental Impact

This rule covers tenant-based rental assistance. Accordingly, under 24 CFR 50.19(b)(11), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the ability of individuals and families participating in the CoC program and who have tenant-based rental assistance to move outside of a CoC's geographic service area but continue to be serviced by that CoC or under the CoC program.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any

rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

List of Subjects in 24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 578 to read as follows:

PART 578 — CONTINUUM OF CARE PROGRAM

1. The authority citation for part 578 continues to read as follows:

Authority: 42 U.S.C. 11371 et seq., 42 U.S.C. 3535(d).

2. In § 578.51, paragraph (c) is revised to read as follows:

§ 578.51 Rental assistance.

* * * * *

(c) Tenant-based rental assistance. Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. Up to 5 years' worth of rental assistance may be awarded to a project in one competition.

(1) When necessary to facilitate the coordination of supportive services, recipients and

subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move.

(3) Program participants who have complied with all program requirements during their residence, who have been a victim of domestic violence, dating violence, sexual assault, or stalking, who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence) if they remain in the assisted unit, and who are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the assisted unit to protect their health and safety. These program participants may move to a different Continuum of Care's geographic service area even if the recipient or subrecipient cannot meet all regulatory requirements of this part in the new geographic area where the unit is located. The recipient or subrecipient, however, must be able to meet all statutory requirements of the Continuum of Care program either directly or through a third-party contract or agreement.

(4) Program participants other than those described in paragraph (c)(3) of this section may choose housing outside of the Continuum of Care's geographic area if the recipient or subrecipient, through its employees or contractors, is able to meet all requirements of this part in the geographic area where the program participant chooses housing. If the recipient or subrecipient is unable to meet the requirements of this part, either directly or through a third-party contract or agreement, the recipient or subrecipient may refuse to permit the program participant to retain the tenant-based rental assistance if the program participant chooses to move outside of the Continuum of Care's geographic area.

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Dated: May 24, 2016

Harriet Tregoning,
Principal Deputy Assistant Secretary for
Community Planning and Development

Nani A. Coloretti, Deputy Secretary

Approved on: May 24, 2016

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